

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

BARON FINANCIAL CORPORATION,

*

Plaintiff

*

Civil Action No.: MJG 03CV 168

v.

*

ERN, LLC

*

Defendant.

*

* * * * *

PLAINTIFF'S MOTION FOR ENTRY OF FINAL JUDGMENT ORDER

Plaintiff, Baron Financial Corporation, by its attorneys, David B. Goldstein and Brooke Schumm III of Daneker, McIntire, Schumm, Prince, Goldstein, Manning & Widmann, P.C., hereby moves for entry of a final Judgment Order, granting Plaintiff, Baron Financial Corporation ("Baron") summary judgment against Defendant, ERN, LLC ("ERN") in the amount of \$175,538.05, (representing the principal sum of \$160,000, plus 6% prejudgment interest thereon to March 17, 2004, in the amount of \$15,538.05), plus additional 6% prejudgment interest thereafter from March 17, 2004, until entry of judgment at the per diem rate of \$26.30 per day, plus costs, and for reasons states as follows:

1. By a Memorandum and Order dated February 27, 2004, the Court, *inter alia*, granted Baron's summary judgment motion against ERN and provided that by March 22, 2004, Plaintiff "shall provide an agreed or proposed Judgment Order including a computation of prejudgment interest as well as any agreement or motion regarding any legal fee award."
2. On March 9, 2004, Baron's counsel sent the letter attached hereto as Exhibit 1 to ERN's counsel, requesting ERN's counsel to agree to the calculation of the amount of interest due and

the form of the proposed order to be submitted to the Court in compliance with the February 27 Memorandum and Order. ERN's counsel has advised Baron's counsel that they do not have authority to agree to the calculation and form of the order.

3. Failing to obtain ERN's agreement, Baron attaches hereto as Exhibits 2 and 3, respectively, an updated proposed order, and an interest calculation through today, Wednesday, March 17, 2004. Baron requests the Court to enter as the final Judgment Order at the earliest possible date the proposed order attached hereto as Exhibit 2.

4. The attached proposed order (Exhibit 2) is identical to the order previously submitted to ERN's counsel for approval and consent except that the interest calculation and judgment amount have been updated through March 17, 2004, based on the updated interest calculation set forth in Exhibit 3. Baron used as the starting dates in the interest calculation, the dates ERN's Marty Taylor testified that ERN received the residual payments at issue, in his Affidavit of Martin A. Taylor, attached as Exhibit 3 to the Defendant's Memorandum of Law in Support of Defendant ERN, LLC's Motion for Partial Summary Judgment. Baron has capped each month's residual payment amount at \$80,000, even though ERN's Taylor actually testified that ERN received more than \$80,000 per month. The interest on each residual payment amount was calculated at the rate of 6% simple interest on the basis of a 365-day year. The interest was charged on basis of the actual number of days elapsed from the date of ERN's receipt of the residual payment until March 17, 2004. A per diem rate of \$26.30 per day should be added for each day after March 17, until entry of the judgment, with the federal post judgment interest rate applying thereafter.

5. Baron elects not to ask the Court to add a legal fee award to the judgment amount, even

though there would be grounds to do so, because Baron is interested in obtaining a prompt final judgment, and therefore wants to avoid additional prolonged litigation over fees.

WHEREFORE, Plaintiff, Baron Financial Corporation, requests the Court to enter a final Judgment Order in its favor against Defendant, ERN, LLC in the amount of \$175,538.05, plus additional 6% prejudgment interest thereafter from March 17, 2004, until entry of judgment at the per diem rate of \$26.30 per day, plus costs.

/S/

David B. Goldstein
Brooke Schumm, III
DANEKER, McINTIRE, SCHUMM, PRINCE,
GOLDSTEIN, MANNING & WIDMANN, P.C.
One North Charles Street, Suite 2450
Baltimore, MD 21201
(410) 649-4755

CERTIFICATE OF SERVICE

I certify that on this 17th day of March, 2004, I caused this document to be served electronically on Paul Mark Sandler, Esquire, Robert B. Levin, Esquire, and Eric R. Harlan, Esquire, Shapiro, Sher, Guinot, and Sandler, 36 South Charles Street, Suite 2000, Baltimore, Maryland 21201.

/S/

David B. Goldstein